

SENATE, No. 3643

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

SYNOPSIS

Prohibits imposition of builder's remedy in exclusionary zoning litigation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning local zoning authority with respect to
2 affordable housing and supplementing P.L.1985, c.222.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. a. The Legislature declares that the use of the builder's
8 remedy, as a method of achieving fair share housing, has been
9 contrary to the public interest and public policy goals in that it
10 resulted in the development of extraordinary amounts of market rate
11 housing in densely populated regions while producing
12 comparatively little affordable housing, to the overall detriment of
13 specific communities and the State as a whole. The Legislature
14 declares that the State's preference for the resolution of existing and
15 future disputes involving exclusionary zoning is a mediation and
16 review process and not litigation, and that it is the intention of
17 P.L. , c. (C.)(pending before the Legislature as this bill) to
18 eliminate the use of the builder's remedy as a method of achieving
19 fair share housing.

20 b. Notwithstanding any law, rule, or regulation to the contrary,
21 in any exclusionary zoning litigation, a plaintiff shall not be
22 awarded a builder's remedy. If a court determines that a
23 municipality has failed to meet its obligation to provide a realistic
24 opportunity for the development of its region's prospective needs
25 for affordable housing, the court may impose a remedy other than a
26 builder's remedy.

27 c. For the purposes of this section:

28 "Exclusionary zoning litigation" means lawsuits filed in courts of
29 competent jurisdiction in this State challenging a municipality's
30 zoning and land use regulations on the basis that the regulations do
31 not make realistically possible the opportunity for an appropriate
32 variety and choice of housing for all categories of people living
33 within the municipality's housing region, including those of low and
34 moderate income, who may desire to live in the municipality.

35 "Builder's remedy" means a court imposed remedy for a litigant
36 who is an individual or a profit-making entity in which the court
37 requires a municipality to utilize zoning techniques such as
38 mandatory set-asides or density bonuses which provide for the
39 economic viability of a residential development by including
40 housing which is not for low and moderate income households.

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42 2. This act shall take effect immediately.

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45 STATEMENT

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47 This bill prohibits the imposition of a builder's remedy in
48 exclusionary zoning litigation. The builder's remedy, as a method

1 of achieving fair share housing, has been contrary to the public
2 interest and public policy goals in that it resulted in the
3 development of extraordinary amounts of market rate housing in
4 densely populated regions while producing comparatively little
5 affordable housing, to the overall detriment of specific communities
6 and the State as a whole. Municipalities have attempted to navigate
7 the rulings of the court for nearly four decades, but have been
8 unable to adequately address the affordable housing needs of the
9 State despite the threat of builder's remedy lawsuits.

10 Under the bill, if a court determines that a municipality has failed
11 to meet its obligation to provide a reasonable opportunity for the
12 development of affordable housing, a court may impose a remedy
13 other than a builder's remedy. For the purposes of the bill,
14 "builder's remedy" means a court imposed remedy for a litigant who
15 is an individual or a profit-making entity in which the court requires
16 a municipality to utilize zoning techniques such as mandatory set-
17 asides or density bonuses which provide for the economic viability
18 of a residential development by including housing which is not for
19 low and moderate income households.